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Netco Waterproofing Co. and Bricklayers and Allied Craftworkers Local 1, New York B.A.C.I.U., AFL-CIO. Case 29-CA-23998

June 13, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE
AND WALSH

Upon a charge filed by the Union on December 26, 2000, the Acting General Counsel of the National Labor Relations Board issued a complaint on March 12, 2001, against Netco Waterproofing Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 26, 2001, counsel for the General Counsel filed a Motion for Summary Judgment with the Board. On April 27, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 11, 2001, notified the Respondent that unless an answer was received by April 20, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant counsel for the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic corporation with a principal office and place of business

located at 24-49 77th Street, East Elmhurst, New York, has been engaged as a building restoration contractor. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations described above, purchased and received at its East Elmhurst facility, goods and materials valued in excess of \$50,000 directly from entities located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Bricklayers and Allied Craftworkers Local 1, New York B.A.C.I.U., AFL-CIO (the Union) has been the designated exclusive collective-bargaining representative of all pointers, cleaners, and caulkers employed by the Respondent for jobs within the geographic confines of the City of New York, Nassau and Suffolk Counties (the unit), and has been recognized as the representative by the Respondent.

This recognition has been embodied in successive collective-bargaining agreements between the Union and the Respondent, the most recent of which was effective by its terms for the period from July 1, 1997, to June 30, 2000.

The collective-bargaining agreements described above were "me too" agreements with the Union, whereby the Respondent agreed to accept and adopt all terms and conditions contained in the collective-bargaining agreements negotiated between the Union and the Building Restoration Contractors Association (the Association), covering the unit.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the unit.

On about a date presently unknown in June 2000, the Union and the Association reached agreement on a new wage and fringe benefit package pay schedule. The agreed-upon changes were embodied in a written Memorandum of Agreement and incorporated into the collective-bargaining agreement described above, which had expired on June 30, 2000, and extended the previously expired agreement.

On about June 29, 2000, the Union requested that the Respondent execute a written Memorandum of Agreement containing the same terms of the agreement described above, and since about June 29, 2000, the Respondent has failed and refused to execute the agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of the employees in the unit, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to execute a Memorandum of Agreement containing the same terms as were agreed to between the Union and the Building Restoration Contractors Association in about June 2000, we shall order the Respondent to execute that Memorandum of Agreement, give retroactive effect to its terms, and make its unit employees whole for any losses attributable to the Respondent's failure to execute the agreement. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Netco Waterproofing Co., East Elmhurst, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Bricklayers and Allied Craftworkers Local 1, New York B.A.C.I.U., AFL-CIO, as the exclusive representative of the employees in the bargaining unit set forth below, by failing and refusing to execute a Memorandum of Agreement containing the same terms as were agreed to between the Union and the Building Restoration Contractors Association in about June 2000.

All pointers, cleaners, and caulkers employed by the Respondent for jobs within the geographic confines of the City of New York, Nassau and Suffolk Counties.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute and implement the Memorandum of Agreement containing the same terms as were agreed to

between the Union and the Building Restoration Contractors Association in about June 2000, give retroactive effect to that agreement, and make the unit employees whole for any losses they have suffered as a result of the Respondent's failure to execute the agreement, with interest, in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in East Elmhurst, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 29, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 13, 2001

Peter J. Hurtgen,	Chairman
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John C. Truesdale,	Member
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Dennis P. Walsh,	Member
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¹ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

National Labor Relations Board

An Agency of the United Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Bricklayers and Allied Craftworkers Local 1, New York B.A.C.I.U., AFL-CIO, as the exclusive representative of the employees in the bargaining unit set forth below, by failing and refusing to execute a Memorandum of Agreement containing the same terms as were agreed

to between the Union and the Building Restoration Contractors Association in about June 2000.

All pointers, cleaners, and caulkers employed by us for jobs within the geographic confines of the City of New York, Nassau and Suffolk Counties.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute and implement the Memorandum of Agreement containing the same terms as were agreed to between the Union and the Building Restoration Contractors Association in about June 2000, give retroactive effect to that agreement, and make the unit employees whole for any losses they have suffered as a result of our failure to execute the agreement, with interest. NETCO WATERPROOFING CO.